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IN THE

Supreme Court of the United States

October Term, 1970

No. 71-38

STANLEY V. TUCKER,

Petitioner,

v.

WILLIAM R. MOLLER, EDMUND T. CURRAN, REGNIER, MOLLER & TAYLOR, a partnership, John Does, A, B, C and D,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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Hartford, Connecticut 06106

INDEX

	PAGE
The Question Presented	1
The Statement of the Case	2
Reasons for Denying the Writ	3
Conclusion	8
Appendix: Complaint in United States District Court, District of Connecticut	1a

Authorities Cited

Cases:

Adickes v. S. H. Kress & Co., 398 U. S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)	6
Bradford v. Lefkowitz, 240 F. Supp. 969 (S. D., N. Y., 1965)	4
Brown v. Dunne, 409 F. 2d 341 (8 CCA, 1969)	4
Campbell v. Glenwood Hlils Hospital, 224 F. Supp. 27 (D. C., Minn., 1963)	6
Campo v. Niemeyer, 182 F. 2d 115 (7 CCA, 1950)	5
Christman v. Commonwealth of Pennsylvania, 275 F. Supp. 434 (W. D., Pa., 1967)	5
Colon v. Greico, 226 F. Supp. 414 (D. C., N. J., 1964)	7
Cooper v. Wilson, 309 F. 2d 153 (6 CCA, 1962)	4
Drexler v. Walters, 290 F. Supp. 150 (D. C., Minn., 1968)	3
Elder v. Consolidated Freightways Corp. of Del., 289 F. Supp 630 (D. C., Minn., 1968)	6

PAGE

Ginsburg v. Stern, 125 F. Supp. 596 (W. D., Pa., 1954), aff'd 222 F. 2d 245 5

Grubbs v. Slater, 144 F. Supp. 554 (W. D., Ky., 1956) 5

Gully v. First National Bank, 57 S. Ct. 96, 299 U. S. 109, 81 L. Ed. 70 (1936) 7

Heller v. Roberts, 386 F. 2d 832 (2 CCA, 1967) 5

Henig v. Odorioso, 385 F. 2d 491 (3 CCA, 1967), certiorari denied 88 S. Ct. 1269, 390 U. S. 1016, 20 L. Ed. 2d 166, rehearing denied 88 S. Ct. 1814, 391 U. S. 929, 20 L. Ed. 2d 671 6

Hoffman v. Hadden, 268 F. 2d 280 (9 CCA, 1959) ... 6

Hopkins v. Wasson, 227 F. Supp. 278 (D. C., Tenn., 1962) 5

Huey v. Barloga, 277 F. Supp. 864 (N. D., Ill., 1967) 6, 7

Jackson v. Hader, 271 F. Supp. 990 (W. D., Mo., 1967) . 4

Jemzura v. Belden, 281 F. Supp. 200 (N. D., N. Y., 1968) 3

Johnson v. Kreider, 264 F. Supp. 188 (M. D., Pa., 1967) 4

Johnson v. Stone, 268 F. 2d 803 (7 CCA, 1959) 5

Jones v. Jones, 410 F. 2d 365 (7 CCA, 1959) 4

Kamsler v. Chicago American Publishing Company, 352 F. 2d 57 (7 CCA, 1965) 5

Kenny v. Fox, 233 F. 2d 288 (6 CCA, 1956) 4

Koch v. Zuieback, 316 F. 2d 1 (9 CCA, 1963) 6

Kregger v. Posner, 248 F. Supp. 804 (E. D., Mich., 1966) 3

PAGE

Love v. Navarro, 262 F. Supp. 520 (C. D., Calif., 1967) 7

Martin v. Wyzanski, 262 F. Supp. 925 (D. C., Mass., 1967) 7

Mattheis v. Hoyt, 136 F. Supp. 119 (W. D., Mich., 1955) 5

Meier v. State Farm Mutual Automobile Insurance Company, 356 F. 2d 504 (7 CCA, 1966), certiorari denied 87 S. Ct. 151, 385 U. S. 875, 17 L. Ed. 2d 102 3

Morgan v. Sylvester, 125 F. Supp. 380 (S. D., N. Y., 1954) 5

Mulligan v. Schachter, 389 F. 2d 231 (6 CCA, 1968) .. 4

Myers v. Couchara, 313 F. Supp. 873 (E. D., Pa., 1970) 3

Peake v. County of Philadelphia, 280 F. Supp. 853 (E. D., Pa. 1968) 4

Pritt v. Johnson, 264 F. Supp. 167 (M. D. Pa., 1967) 4

Productions v. Mosley, 190 F. 2d 904 (9 CCA, 1951) 8

Pugliano v. Staziak, 231 F. Supp. 347 (W. D., Pa., 1964), aff'd 345 F. 2d 797 3

Ream v. Handley, 359 F. 2d 728 (7 CCA, 1966) 5

Reinke v. Richardson, 279 F. Supp. 155 (E. D., Wisc., 1968) 4

Sarelas v. Porikos, 320 F. 2d 827 (7 CCA, 1963), certiorari denied 84 S. Ct. 519, 375 U. S. 985, 11 L. Ed. 2d 473 3

Sarelas v. Sheehan, 326 F. 2d 490 (7 CCA, 1963), certiorari denied 84 S. Ct. 1334, 377 U. S. 932, 12 L. Ed. 2d 296 7

Shemaitis v. Froemke, 189 F. 2d 963 (7 CCA, 1951) .. 6

PAGE

Sinchak v. Parente, 262 F. Supp. 79 (W. D., Pa., 1966) 7

Skolnick v. Martin, 317 F. 2d 855 (7 CCA, 1963), certiorari denied 84 S. Ct. 199, 375 U. S. 908, 11 L. Ed. 2d 146, rehearing denied 84 S. Ct. 440, 375 U. S. 960, 11 L. Ed. 2d 319 3

Skolnick v. Spolar, 317 F. 2d 857 (7 CCA, 1963) 5

Stiltner v. Rhay, 322 F. 2d 314 (9 CCA, 1963), certiorari denied 84 S. Ct. 678, 376 U. S. 920, 11 L. Ed. 2d 615, rehearing denied 84 S. Ct. 972, 376 U. S. 959, 11 L. Ed. 2d 978 4

Swift v. Fourth National Bank of Columbus, Ga., 205 F. Supp. 563 (M. D., Ga. 1962) 7

Travers v. Paton, 261 F. Supp. 110 (D. C., Ct. 1966) 6

Vance v. Robinson, 292 F. Supp. 786 (W. D., N. C., 1968) 4

Van Daele v. Vinci, 284 F. Supp. 71 (N. D., Ill., 1968) 7

Wallach v. Cannon, 357 F. 2d 557 (8 CCA, 1966) 6

Watson v. Devlin, 167 F. Supp. 638 (E. D., Mich., 1958) 7

Whittington v. Johnson, 102 F. Supp. 352, 353 (M. D., Ala., 1952) 7

Williams v. Yellow Cab Company of Pittsburgh, 200 F. 2d 302 (3 CCA, 1952) 6

STATUTES:

28 U.S.C. § 1331 7
28 U.S.C. § 1343 8
28 U.S.C. § 2201 8
28 U.S.C. § 2202 8
42 U.S.C. § 1983 ..... 2, 6
42 U.S.C. § 1985 ..... 2, 6, 7

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WILLIAM R. MOLLER, EDMUND T. CURRAN, REGNIER, MOLLER & TAYLOR, a partnership, John Does, A, B, C and D,

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

The respondents pray that a writ of certiorari does not issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above case on April 9, 1971.

The Question Presented

Are the averments of the complaint filed with the United States District Court for the District of Connecticut sufficient to constitute a good claim for violation of, and to

invoke relief under, 42 U.S.C. § 1983 and 42 U.S.C. § 1985? The complaint is printed in the Appendix hereto.

The Statement of the Case

On June 19, 1970, the petitioner, Stanley V. Tucker, a citizen of the State of Connecticut, caused to be filed a complaint in the United States District Court for the District of Connecticut against several defendants, citizens of the State of Connecticut. Said complaint, as amended, is predicated upon alleged violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985, and seeks injunctive relief and recovery of money damages. It is claimed that the defendants "chose to file briefs replete with libel and used slander", and violated the canons of ethics in other lawsuits pending before the United States District Court for the District of Connecticut.

The respondents moved for dismissal of the complaint on July 20, 1970. The grounds set forth in support of this motion were that the complaint described no state action nor conduct under color of law, that the complaint did not show any violation or deprivation of any federal constitutional or statutory right as required under the Civil Rights Act, and that the court lacked jurisdiction.

The District Court (Blumenfeld, J.) ordered dismissal on the grounds that "clearly the defendants here, in brief and oral argument before the court in the prior cases brought by Tucker, were acting only as private individuals in a professional capacity. As such their conduct generated no coloration of state law sufficient to permit relief under the Civil Rights Act." The District Court determined that Tucker would be entitled to no relief under any state of facts that could be proved in support of his claim.

The United States Court of Appeals for the Second Circuit, in a per curiam decision, affirmed the opinion of the District Court.

The petitioner now seeks review of the decision of the United States Court of Appeals for the Second Circuit.

Reasons for Denying the Writ

I. The petition fails to raise substantial and important Federal questions. The decision of the United States Court of Appeals for the Second Circuit is not in conflict with the decisions of another court of appeals on the same matter, nor is the decision in any way in conflict with applicable decisions of this court. The decision of the United States Court of Appeals for the Second Circuit does not constitute a departure from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision.

II. It is clear from the complaint that, whatever the named respondents are alleged to have done in the other lawsuits pending before the United States District Court for the District of Connecticut with respect to the claimed libel, slander and breach of ethics, their acts were performed in their professional capacities as attorneys.

It is well settled that an attorney performing in his professional capacity, though an officer of the court, is not acting under color of law within the meaning of the Civil Rights Act. *Myers* v. *Couchara*, 313 F. Supp. 873 (E. D., Pa., 1970); *Jemzura* v. *Belden*, 281 F. Supp. 200 (N. D., N. Y., 1968); *Kregger* v. *Posner*, 248 F. Supp. 804 (E. D., Mich., 1966); *Meier* v. *State Farm Mutual Automobile Insurance Company*, 356 F. 2d 504 (7 CCA, 1966), certiorari denied 87 S. Ct. 151, 385 U. S. 875, 17 L. Ed. 2d 102; *Sarelas* v. *Porikos*, 320 F. 2d 827 (7 CCA, 1963), certiorari denied 84 S. Ct. 519, 375 U. S. 985, 11 L. Ed. 2d 473; *Skolnick* v. *Martin*, 317 F. 2d 855 (7 CCA, 1963), certiorari denied 84 S. Ct. 199, 375 U. S. 908, 11 L. Ed. 2d 146, rehearing denied 84 S. Ct. 440, 375 U. S. 960, 11 L. Ed. 2d 319; *Drexler* v. *Walters*, 290 F. Supp. 150 (D. C., Minn., 1968); *Pugliano*

v. *Staziak*, 231 F. Supp. 347 (W. D., Pa., 1964), aff'd 345 F. 2d 797; *Jones* v. *Jones*, 410 F. 2d 365 (7 CCA, 1969); *Brown* v. *Dunne*, 409 F. 2d 341 (8 CCA, 1969); *Reinke* v. *Richardson*, 279 F. Supp. 155 (E. D., Wisc., 1968); *Johnson* v. *Kreider*, 264 F. Supp. 188 (M. D., Pa., 1967); *Peake* v. *County of Philadelphia*, 280 F. Supp. 853 (E. D., Pa., 1968); *Jackson* v. *Hader*, 271 F. Supp. 990 (W. D., Mo., 1967); *Mulligan* v. *Schlachter*, 389 F. 2d 231 (6 CCA, 1968); *Vance* v. *Robinson*, 292 F. Supp. 786 (W. D., N. C., 1968); *Pritt* v. *Johnson*, 264 F. Supp. 167 (M. D., Pa., 1967); *Cooper* v. *Wilson*, 309 F. 2d 153 (6 CCA, 1962); *Kenney* v. *Fox*, 232 F. 2d 288 (6 CCA, 1956).

The allegations of the Complaint, even if assumed to be true, can only give rise to facts showing that the respondents were acting merely as private individuals and not under color of law. The allegations of the Complaint, even if assumed to be true, can only give rise to facts showing that the respondents were not acting while clothed with authority of the State of Connecticut or of the federal government, nor did they purport to act under any such authority. The fact that the respondents are Commissioners of the Superior Court is wholly irrelevant and immaterial with respect to their alleged conduct in the United States District Court for the District of Connecticut.

The decision of the United States Court of Appeals for the Second Circuit should not be disturbed. It is logical and well founded. The decision is in line with, and gives respect to the well reasoned rulings of other courts.

III.

Only rights secured by the Constitution and the statutes of The United States are protected by the Civil Rights Act. *Bradford* v. *Lefkowitz*, 240 F. Supp. 969 (S. D., N. Y., 1965); *Stiltner* v. *Rhay*, 322 F. 2d 314 (9 CCA, 1963), certiorari denied 84 S. Ct. 678, 376 U. S. 920, 11 L. Ed. 2d

615, rehearing denied 84 S. Ct. 972, 376 U. S. 959; 11 L. Ed. 2d 978.

It is clear that the acts complained of do not amount to violation of civil rights.

The following classes of tort are merely illustrative examples of private wrongs for which federal protection is not afforded: alleged slander of title to real estate, *Ream* v. *Handley,* 359 F. 2d 728 (7 CCA, 1966); loss of job allegedly due to slander, *Hopkins* v. *Wasson,* 227 F. Supp. 278 (D. C., Tenn., 1962); alleged publication of defamatory matter, *Grubbs* v. *Slater,* 144 F. Supp. 554 (W. D., Ky., 1956); alleged libel and slander, *Mattheis* v. *Hoyt,* 136 F. Supp. 119 (W. D., Mich., 1955).

The following cases, with particular reference to alleged misuse of judicial rights or remedies or alleged interference with judicial rights or remedies, demonstrate that no federal protection is afforded: alleged libelous newspaper article causing denial of fair trial, *Kamsler* v. *Chicago American Publishing Company,* 352 F. 2d 57 (7 CCA, 1965); alleged fraud in litigation, *Campo* v. *Niemeyer,* 182 F. 2d 115 (7 CCA, 1950); alleged derogatory remark of prosecuting attorney in open court, *Heller* v. *Roberts,* 386 F. 2d 832 (2 CCA, 1967); alleged perjured, slanderous testimony of witness and statements of counsel, *Johnson* v. *Stone,* 268 F. 2d 803 (7 CCA, 1959); alleged false statements in brief filed by state solicitor general, *Morgan* v. *Sylvester,* 125 F. Supp. 380 (S. D., N. Y., 1954); alleged defamatory remarks of bailiff and defense counsel, *Skolnick* v. *Spolar,* 317 F. 2d 857 (7 CCA, 1963).

The Civil Rights Act's protection does not extend to alleged breaches of ethics. *Christman* v. *Commonwealth of Pennsylvania,* 275 F. Supp. 434 (W. D., Pa., 1967); *Ginsburg* v. *Stern,* 125 F. Supp. 596 (W. D., Pa., 1954), aff'd 222 F. 2d 245.

IV.

To state a claim upon which relief may be granted under 42 USC § 1983, the acts alleged must be done under color of law. *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). Conversely, 42 USC § 1983, does not apply to alleged invasions of individuals by private individuals not acting under color of law. *Williams* v. *Yellow Cab Company of Pittsburgh*, 200 F. 2d 302 (3 CCA, 1952); *Shemaitis* v. *Froemke*, 189 F. 2d 963 (7 CCA, 1951). Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

To state a claim upon which relief may be granted under 42 USC § 1985, the acts alleged must be done under color of law. *Campbell* v. *Glenwood Hills Hospital*, 224 F. Supp. 27 (D. C. Minn., 1963); *Wallach* v. *Cannon*, 357 F. 2d 557 (8 CCA, 1966); *Huey* v. *Barloga*, 277 F. Supp. 864 (N. D., Ill., 1967); *Elder* v. *Consolidated Freightways Corp. of Del.*, 289 F. Supp. 630 (D. C., Minn., 1968); *Koch* v. *Zuieback*, 316 F. 2d 1 (9 CCA, 1963); *Hoffman* v. *Hadden*, 268 F. 2d 280 (9 CCA, 1959); *Henig* v. *Odorioso*, 385 F. 2d 491 (3 CCA, 1967); certiorari denied 88 S. Ct. 1269, 390 U. S. 1016, 20 L. Ed. 2d 166, rehearing denied 88 S. Ct. 1814, 391 U. S. 929, 20 L. Ed. 2d 671. Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

V.

The respondents further contend that there are additional grounds, in addition to those expressly cited in the decisions below, which constitute valid alternate bases for denying the writ of certiorari. These other grounds were pressed below by the respondents.

To state a claim upon which relief may be granted under 42 U.S.C. § 1983, the acts alleged must amount to a deprivation of a constitutional right. *Travers* v. *Paton*, 261 F.

Supp. 110 (D. C., Ct., 1966); *Sarelas* v. *Sheehan,* 326 F. 2d 490 (CCA 7, 1963), certiorari denied, 84 S. Ct. 1334, 377 U. S. 932, 12 L. Ed. 2d 296; *Love* v. *Navarro,* 262 F. Supp. 520 (C. D., Calif., 1967); *Colon* v. *Greico,* 226 F. Supp. 414 (D. C., N. J., 1964). In essence, Congress did not, and cannot, "create a federal cause of action in favor of persons (allegedly) injured through abridgment of rights which are not federal constitutional rights". *Whittington* v. *Johnson,* 102 F. Supp. 352, 353 (M. D., Ala., 1952). Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

To state a claim upon which relief may be granted under 42 U.S.C. § 1985, the acts alleged must amount to a deprivation of a constitutional right and must give rise to discrimination. *Huey* v. *Barloga,* 277 F. Supp. 869 (N. D., Ill., 1967); *Watson* v. *Devlin,* 167 F. Supp. 638 (E. D., Mich., 1958). Property rights are not federally protected, *Van Daele* v. *Vinci,* 294 F. Supp. 71 (N. D., Ill., 1968); but are left to the protection of the state. *Sinchak* v. *Parente,* 262 F. Supp. 79 (W. D., Pa., 1966); *Swift* v. *Fourth National Bank of Columbus,* Ga., 205 F. Supp. 563 (M. D., Ga., 1962). Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

VI.

The allegations of the complaint do not set forth a claim involving a federal question as is required to establish jurisdiction under 28 U.S.C. § 1331. The allegations, on the face of the complaint do not disclose any right of Petitioner which will be sustained if the Constitution and laws of the United States are given one construction, and defeated if they are given another construction. *Martin* v. *Wyzanski,* 262 F. Supp. 925 (D. C., Mass., 1967); *Gully* v. *First National Bank,* 57 S. Ct. 96, 299 U. S. 109, 81 L. Ed. 70 (1936).

As previously set forth in argument, the allegations of the complaint do not set forth a claim of deprivation of federal constitutional rights under the Civil Rights Act as is required to establish jurisdiction under 28 USC § 1343.

The allegations of the Complaint do not set forth diversity of citizenship as is required to establish jurisdiction under 28 USC § 2201 and 28 USC § 2202. *Productions* v. *Mosley,* 190 F. 2d 904 (9 CAA, 1951).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PETER C. SCHWARTZ,
Counsel for Respondents
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Hartford, Connecticut 06106

APPENDIX

UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT.

Civil Action No. 13912

JURY TRIAL DEMANDED

STANLEY V. TUCKER,

Plaintiff,

VS.

WILLIAM R. MOLLER, Esq., 41 Lewis St., Hartford Conn., EDMUND T. CURRAN, Esq., 41 Lewis St., Hartford, Conn., REGNIER, MOLLER & TAYLOR, a partnership, 41 Lewis St., Hartford Conn.,

JOHN A. DOE, address unknown,
JOHN B. DOE, address unknown,
JOHN C. DOE, address unknown,

JOHN D. DOE, address unknown, all four who made certain statements to defendants Moller and Curran and others,

Defendants.

COMPLAINT

1. This is an action for injunctive relief and damages authorized by 42 USC Sec. 1983 to secure rights, privileges and immunities secured by the Constitution and laws of the United States.

2. Jurisdiction is conferred on this Court by 28 USC Secs. 1331, 1343(3), 1343(4), 2201, and 2202, and Local Rule of Civil Procedure No. 2(d)1.

3. This action seeks injunctive relief, both temporary and permanent, pursuant to 42 USC Sec. 1983 and 28 USC

Secs. 1331, 1343(3), (4), restraining the defendants from further harassment, intimidation, libel, slander, and other injury of the plaintiff, and restraining the defendants from further conspiracy to harass, intimidate, libel, slander and otherwise injure plaintiff.

4. The plaintiff is an adult citizen of the United States and of the State of Connecticut, residing in the Town of Hartford. The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00).

5. Defendant Moller is an attorney at law, duly licensed to practice law in the State of Connecticut, who has studied carefully the jurisdictional provisions of Title 28, United States Code, the Federal Rules of Civil Procedure, and the local rules of this Court. He has been admitted to practice before this Court, and has taken an oath to support the Constitution and laws of the United States of America, to discharge faithfully the duties of a lawyer, to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he has signed the roll of attorneys of this Court and paid the fee required by law.

6. Defendant Curran is an attorney at law, duly licensed to practice law in the State of Connecticut, who apparently has not studied carefully the jurisdictional provisions of Title 28, USC, the Federal Rules of Civil Procedure, and the local rules of this Court. He has not, according to the records of this Court, been admitted to practice before this Court, although he represents that he was admitted to practice before the bar of this Court in 1962. He apparently has not taken any oath to support the Constitution and laws of the United States of America, to discharge

faithfully the duties of a lawyer, to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he apparently has not signed the roll of attorneys of this Court nor paid the fee required by law.

7. Defendants John A. Doe, John B. Doe, John C. Doe, and John D. Doe are unknown to the plaintiff at this time. They are believed to be citizens of the United States, and residents of the State of Connecticut and/or the State of California.

8. On or before May 1, 1970, defendants John A. Doe, John B. Doe, John C. Doe, and John D. Doe furnished some information to defendant law firm Regnier, Moller & Taylor, and defendants Moller and Curran, and conspired with these defendants to harass, intimidate, libel, slander, delay justice for, and otherwise injure plaintiff Tucker.

9. On or about May 1, 1970, in furtherance of the above conspiracy, defendant Moller caused to be written memoranda "in support of defendants' motion to dismiss" in Civil Actions Nos: 13785, 13786, 13787 previously filed in this Court in good faith by plaintiff Tucker, these memoranda containing, by design of the defendants, certain false and defamatory allegations impugning the character and reputation of plaintiff Tucker. The allegations were entirely beyond the scope of defendant Moller's authority and responsibilities to his clients, were without any basis in fact whatsoever, and were made maliciously, with reckless disregard of the rights and privileges of plaintiff Tucker and the possible adverse affects of the allegations on plaintiff Tucker. The allegations were made in total disregard of defendant Moller's oath of office both as an attorney and as an officer of this Court, and were made for the illegal and immoral purposes of delaying and injuring the causes

represented by plaintiff in this Court and causing embarrassment, shame, nervousness, mental pain and anguish, harassment, and intimidation of plaintiff Tucker, pro se, to discourage and hamper him in his pro se attempts to gain his Constitutional guarantees of due process and equal justice under law, and to encourage others to harass and intimidate plaintiff Tucker by filing attachments against his property, denying him credit, and otherwise injuring him.

10. All of the actions of defendant Moller delineated above were known by defendant Moller to be immoral, unethical, illegal, and entirely without the scope of Rule 1 of the Federal Rules of Civil Procedure. The said actions are all the more reprehensible because they were taken by an officer of this Court against a pro se plaintiff in the guise of making representations about plaintiff's "credibility" when defendant Moller knew, because of his study of the Federal Rules of Civil Procedure and Title 28, USC, that there can be no proper attack on credibility in a motion to dismiss, since in a motion to dismiss, the allegations in the Complaint must be considered as true.

11. The above actions of defendant Moller were done for the unethical, immoral, and illegal purpose of confusing and delaying this Court in defendant Moller's attempt to preserve, as long as possible, an unconstitutional advantage for alleged creditors over alleged debtors in Connecticut.

12. On, before, and after May 1, 1970, defendant law firm Regnier, Moller & Taylor, defendants Moller and Curran, and others unknown to the plaintiff conspired to unethically and unlawfully obtain exclusive representation of all defendants in this Court in Civil Actions Nos. 13785, 13786, and 13787, for lucre and malice toward

plaintiff Tucker, and in order that defendants might be able to operate freely in their wrongful and illegal acts against plaintiff Tucker, without interference or remonstrance by other more ethical lawyers defending some of the defendants in said Civil Actions Nos. 13785, 13786, and 13787.

13. On or about May 25, 1970, defendant Curran, in furtherance of the above conspiracy of the defendants, made false, misleading, erroneous and immaterial allegations impugning the character and reputation of plaintiff Tucker while purportedly addressing himself to the matters under consideration in this Court. The allegations were entirely beyond the scope of defendant Curran's authority and responsibility to his clients, were without any basis in fact whatsoever, and were made maliciously, with reckless disregard of the rights and privileges of plaintiff Tucker. The allegations were made in total disregard of defendant Curran's oath of office as an attorney, and were made for the illegal and immoral purposes of delaying and injuring the causes represented by plaintiff pro se in this Court and causing embarrassment, shame, nervousness, mental pain and anguish, harassment, and intimidation of plaintiff Tucker, pro se, to discourage and hamper him in his attempts to gain his Constitutional guarantees of due process and equal justice under law, and to encourage others to harass and intimidate plaintiff Tucker by filing unconstitutional attachments against his property, denying him credit, and otherwise injuring him.

14. All of the actions of defendant Curran delineated above should have been known by defendant Curran to be immoral, unethical, illegal, and entirely without the scope of Rule 1 of the Federal Rules of Civil Procedure. The said actions are all the more reprehensible because they were taken by a lawyer against a pro se plaintiff, in

the guise of making representations about plaintiff's "credibility" when defendant Curran should have known, because of his experience as a lawyer, that there can be no proper attack on credibility in motion to dismiss, since in a motion to dismiss, the allegations in the Complaint must be considered as true.

15. The above actions of defendant Curran were done for the unethical, immoral, and illegal purpose of confusing and delaying this Court in defendant Curran's attempt to emulate his superiors, including defendant Moller, in their attempt to preserve, as long as possible, an unconstitutional advantage for alleged creditors over alleged debtors in Connecticut.

16. The above actions of the defendants were done deliberately, with malice aforethought in concert with each other, and others, under color of state statutes, ordinances, customs, regulations, and usage, to prevent plaintiff from exercising his rights, privileges, and immunities under the Constitution and its first, fifth, and fourteenth amendments and the federal laws, and to punish illegally the plaintiff for so exercising his said rights, privileges and immunities, to his great harm.

17. The aforesaid acts of the defendants in concert constituted violations of the Constitution and laws of the United States, in that the plaintiff has been harassed, hampered, and intimidated in his exercise of his right to free speech, to petition for redress of grievances, to enjoy property with the protection of due process of law, to enjoy the equal protection of the law, and to enjoy liberty and the pursuit of happiness.

18. As a direct and proximate result of the aforesaid acts of the defendants, the plaintiff has suffered great

mental pain and anguish, from then until now and he will continue to so suffer in the future; and he has lost and will lose in the future large sums of money by reason of having been greatly humiliated and held up to public scorn and derision, caused to suffer mental pain and anguish, had had, and will continue to have, severe loss of credit, all as a result of the malicious acts of the defendants.

WHEREFORE plaintiff demands judgment against each of the defendants in the amount of Eighty Five Thousand Dollars ($85,000.00) plus the costs of the action, disbursements, and reasonable attorneys' fees, if any there be, and plaintiff further demands punitive damages against each defendant in the amount of an additional Eighty Five Thousand Dollars ($85,000.00), and he further demands such other additional relief as to the Court seems just, proper, and equitable under the circumstances:

By Stanley V. Tucker
Stanley V. Tucker, Plaintiff
963 Capital Ave.
Hartford, Conn. 06106
523-7742

(Verified June 19, 1970.)